

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2012-4

CRISOSTOMO P. VILLANUEVA
2103 Redwood Street #206
Vallejo, CA 94590

Certified Public Accountant Certificate No.
CPA 37981

Certified Public Accountancy Corporation
Certificate No. COR 6150

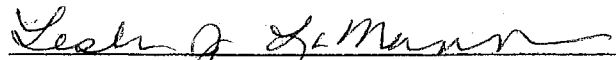
Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on June 29, 2012.

It is so ORDERED May 30, 2013.


FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2012-4

13 **CRISOSTOMO P. VILLANUEVA**
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Vallejo, CA 94590

14 **STIPULATED SETTLEMENT AND**
15 **DISCIPLINARY ORDER**

16 **Certified Public Accountant Certificate No.**
CPA 37981

17 **Certified Public Accountancy Corporation**
Certificate No. COR 6150

18 Respondent.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
24 Accountancy. She brought this action solely in her official capacity and is represented in this
25 matter by Kamala D. Harris, Attorney General of the State of California, by Shana A. Bagley,
26 Deputy Attorney General.

27 2. Respondent Crisostomo P. Villanueva (Respondent) is representing himself in this
28 proceeding and has chosen not to exercise his right to be represented by counsel.

1 3. On or about June 10, 1983, the California Board of Accountancy issued Certified
2 Public Accountant Certificate No. CPA 37981 to Respondent. The Certified Public Accountant
3 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
4 No. AC-2012-4 and will expire on July 31, 2014, unless renewed.

5 4. On or about September 11, 2008, the California Board of Accountancy issued
6 Certified Public Accountancy Corporation Certificate No. COR 6150 to Cris P. Villanueva, CPA,
7 Inc., with Respondent as the sole shareholder. The Certified Public Accountancy Corporation
8 Certificate will expire on September 30, 2014, unless renewed.

9 **JURISDICTION**

10 5. Accusation No. AC-2012-4 was filed before the California Board of Accountancy
11 (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The
12 Accusation and all other statutorily required documents were properly served on Respondent on
13 May 21, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

14 6. A copy of Accusation No. AC-2012-4 is attached as exhibit A and incorporated by
15 reference.

16 **ADVISEMENT AND WAIVERS**

17 7. Respondent has carefully read and understands the charges and allegations in
18 Accusation No. AC-2012-4. Respondent has also carefully read and understands the effects of
19 this Stipulated Settlement and Disciplinary Order.

20 8. Respondent is fully aware of his legal rights in this matter, including the right to a
21 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
22 his own expense; the right to confront and cross-examine the witnesses against him; the right to
23 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
24 the attendance of witnesses and the production of documents; the right to reconsideration and
25 court review of an adverse decision; and all other rights accorded by the California
26 Administrative Procedure Act and other applicable laws.

27 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
28 every right set forth above.

1 **CULPABILITY**

2 10. Respondent admits that the matters asserted in Accusation No. AC-2012-4, if proven
3 at hearing, would form a basis for discipline of his Certified Public Accountant Certificate and
4 Certified Public Accountancy Corporation Certificate.

5 11. Respondent agrees that his Certified Public Accountant Certificate and Certified
6 Public Accountancy Corporation Certificate are subject to discipline and he agrees to be bound by
7 the CBA's probationary terms as set forth in the Disciplinary Order below.

8 12. The admissions made by Respondent in this Stipulation are only for the purposes of
9 this proceeding, or any other proceedings in which the CBA or other professional licensing
10 agency is involved, and shall not be admissible in any other criminal or civil proceeding.

11 **CIRCUMSTANCES IN MITIGATION**

12 13. Respondent Crisostomo P. Villanueva has never been the subject of any disciplinary
13 action. He is admitting responsibility at an early stage in the proceedings.

14 14. Respondent has provided long-standing support and public service to his community,
15 the City of Vallejo, and the State of California.

16 **CONTINGENCY**

17 15. This stipulation shall be subject to approval by the California Board of Accountancy.
18 Respondent understands and agrees that counsel for Complainant and the staff of the California
19 Board of Accountancy may communicate directly with the CBA regarding this stipulation and
20 settlement, without notice to or participation by Respondent. By signing the stipulation,
21 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
22 stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to adopt this
23 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
24 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
25 the parties, and the CBA shall not be disqualified from further action by having considered this
26 matter.

16. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

17. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

18. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA 37981 issued to Crisostomo P. Villanueva (Respondent) and Certified Public Accountancy Corporation Certificate No. COR 6150 issued to Crisostomo P. Villanueva, CPA, Inc., with Respondent as the sole shareholder, are revoked. However, the revocations are stayed and both parties (Respondents) are placed on probation for three (3) years on the following terms and conditions.

1. Obey All Laws

Respondents shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

2. Cost Reimbursement

Respondents shall reimburse the CBA \$10,000.00 for its investigation and prosecution costs. The payments shall be made in monthly installments with full payment made within 30 months of the date the CBA's decision is final.

3. Submit Written Reports

Respondents shall submit, within 10 days of completion of the quarter, written reports to the CBA on a form obtained from the CBA. The respondents shall submit, under penalty of

1 perjury, such other written reports, declarations, and verification of actions as are required. These
2 declarations shall contain statements relative to respondents compliance with all the terms and
3 conditions of probation. Respondents shall immediately execute all release of information forms
4 as may be required by the CBA or its representatives.

5 **4. Personal Appearances**

6 Respondents shall, during the period of probation, appear in person at interviews/meetings
7 as directed by the CBA or its designated representatives, provided such notification is
8 accomplished in a timely manner.

9 **5. Comply With Probation**

10 Respondents shall fully comply with the terms and conditions of the probation imposed by
11 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
12 its monitoring and investigation of the respondent's compliance with probation terms and
13 conditions.

14 **6. Practice Investigation**

15 Respondents shall be subject to, and shall permit, a practice investigation of the respondents
16 professional practice. Such a practice investigation shall be conducted by representatives of the
17 CBA, provided notification of such review is accomplished in a timely manner.

18 **7. Comply With Citations**

19 Respondents shall comply with all final orders resulting from citations issued by the
20 California Board of Accountancy.

21 **8. Tolling of Probation for Out-of-State Residence/Practice**

22 In the event respondents should leave California to reside or practice outside this state,
23 respondent must notify the CBA in writing of the dates of departure and return. Periods of non-
24 California residency or practice outside the state shall not apply to reduction of the probationary
25 period, or of any suspension. No obligation imposed in this Stipulated Settlement and
26 Disciplinary Order, including requirements to file written reports, reimburse the CBA costs, and
27 make restitution to consumers, shall be suspended or otherwise affected by such periods of out-
28 of-state residency or practice except at the written direction of the CBA.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

Dated: 8 May 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

SHANA A. BAGLEY
Deputy Attorney General
Attorneys for Complainant

SF2011202905/ Stipulation.rtf

Exhibit A

Accusation No. AC-2012-4

1 KAMALA D. HARRIS
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2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
4 State Bar No. 169423
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Case No. AC-2012-4

12 **CRISOSTOMO P. VILLANUEVA**
13 **2103 Redwood Street #206**
Vallejo, CA 94590

ACCUSATION

14 **Certified Public Accountant Certificate**
15 **No. CPA 37981**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

22 2. On or about June 10, 1963, the California Board of Accountancy issued Certified
23 Public Accountant Certificate Number CPA 37981 to Crisostomo P. Villanueva (Respondent).
24 The Certified Public Accountant Certificate was in full force and effect at all times relevant to the
25 charges brought in this Accusation and will expire on July 31, 2012, unless renewed.

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1 6. Code Section 5050.1, subdivision (a), states:

2 Any person that engages in any act that is the practice of public accountancy in
3 this state consents to the personal, subject matter, and disciplinary jurisdiction of the
4 board. This subdivision is declarative of existing law.

5 REGULATORY PROVISION

6 7. Title 16, California Code of Regulations, section 58 (Board Rule 58) provides:

7 [L]icensees engaged in the practice of public accountancy shall comply with all
8 applicable professional standards, including but not limited to generally accepted
9 accounting principles and generally accepted auditing standards.

10 APPLICABLE PROFESSIONAL STANDARDS

11 8. Standards of practice pertinent to this Accusation and the engagement in issue
12 include, without limitation:

13 A. Internal Revenue Service Regulations, title 31, part 10, section 10.22, subdivision (a),
14 provides that, in general, a practitioner must exercise due diligence:

15 (1) In preparing or assisting in the preparation of, approving, and filing tax
16 returns, documents, affidavits, and other papers relating to Internal Revenue Service
17 matters;

18 (2) In determining the correctness of oral or written representations made by the
19 practitioner to the Department of the Treasury; and

20 (3) In determining the correctness of oral or written representations made by the
21 practitioner to clients with reference to any matter administered by the Internal
22 Revenue Service.

23 B. Internal Revenue Service Regulations, title 31, part 10, section 10.51, subdivision
24 (a)(13), provides that incompetence and disreputable conduct for which a practitioner may be
25 sanctioned includes, but is not limited to:

26 Giving a false opinion, knowingly, recklessly, or through gross incompetence,
27 including an opinion which is intentionally or recklessly misleading, or engaging in a
28 pattern of providing incompetent opinions on questions arising under the Federal tax
 laws. False opinions described in this paragraph (a)(13) include those which reflect or
 result from a knowing misstatement of fact or law, from an assertion of a position
 known to be unwarranted under existing law, from counseling or assisting in conduct
 known to be illegal or fraudulent, from concealing matters required by law to be

1 revealed, or from consciously disregarding information indicating that material facts
2 expressed in the opinion or offering material are false or misleading. For purposes of
3 this paragraph (a)(13), reckless conduct is a highly unreasonable omission or
4 misrepresentation involving an extreme departure from the standards of ordinary care
5 that a practitioner should observe under the circumstances. A pattern of conduct is a
6 factor that will be taken into account in determining whether a practitioner acted
7 knowingly, recklessly, or through gross incompetence. Gross incompetence includes
8 conduct that reflects gross indifference, preparation which is grossly inadequate under
9 the circumstances, and a consistent failure to perform obligations to the client.

10 COST RECOVERY

11 9. Code Section 5107, subdivision (a), states:

12 The executive officer of the board may request the administrative law judge, as
13 part of the proposed decision in a disciplinary proceeding, to direct any holder of a
14 permit or certificate found to have committed a violation or violations of this chapter
15 to pay to the board all reasonable costs of investigation and prosecution of the case,
16 including, but not limited to, attorneys' fees. The board shall not recover costs
17 incurred at the administrative hearing.

18 PUBLIC PROTECTION

19 10. Code Section 5000.1 provides, as follows:

20 Protection of the public shall be the highest priority for the California Board of
21 Accountancy in exercising its licensing, regulatory, and disciplinary functions.
22 Whenever the protection of the public is inconsistent with other interests sought to be
23 promoted, the protection of the public shall be paramount.

24 FACTUAL BACKGROUND

25 11. On or about March 7, 2007, Respondent prepared and filed a 2006 Federal Individual
26 Income Tax Return for AC and EC (collectively, "The C's").¹

27 12. Respondent had prepared the Cs' income tax returns since 2003.

28 13. The 2006 Income Tax Return contained the following errors:

a. On Form 1040 of the Income Tax Return, Respondent correctly reported that EC
received a pension. Respondent erroneously listed the pension as an "early distribution" from an
Individual Retirement Account, causing the C's to be subject to a 10 percent tax on the pension

¹ All non-parties are identified by letters in order to preserve privacy. The names of the
non-parties will be disclosed in response to a request for discovery.

1 amount. Respondent should have reported the pension as a "normal distribution" and, therefore,
2 not subject to additional taxation.

3 b. Respondent failed to report the C's 2005 tax year state refund as income on Form
4 1040 as required.

5 c. Respondent incorrectly reported a sale of residential property on M Court² on
6 December 31, 2006. The C's gifted the property to their daughter in 2005. Respondent should
7 have reported the gift in 2005 on a Gift Tax Return, Form 709.

8 d. On the C's Schedule E Supplemental Income and Loss from Rental Real Estate
9 (Schedule E)³, Respondent improperly indentified the F Street residential rental property as a
10 "facility building." Respondent should have identified the property as a "rental." There are
11 different tax implications for income from a facility building because it is not related to income
12 from residential rental real estate.

13 e. On AC's Schedule C Profit or Loss from Business (Schedule C)⁴ attached to the
14 Income Tax Return, Respondent erroneously combined AC's income as a self-employed real
15 estate agent with income from residential rental property located on S Drive.

16 1. On AC's Schedule C, Respondent listed \$13,200.00 under "other income" when no
17 "other income" should have been reported.

18 2. On AC's Schedule C, Respondent listed \$12,943.00 under "mortgage interest" for the
19 office space that she used to conduct business. However, Respondent should not have reported
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23 ² All non-party addresses are identified by letters in order to preserve privacy. The
24 addresses of the non-parties will be disclosed in response to a request for discovery.

25 ³ A Schedule E reports supplemental income from various sources, including rental real
26 estate activity.

27 ⁴ A Schedule C is a tax reporting form for self-employed individuals to report the income
28 and expenses of business activity. If a taxpayer has multiple businesses, the accountant must
prepare a separate Schedule C for each business.

1 any mortgage interest amount as AC rented a desk and did not own the office space. The
2 \$12,943.00 equaled the mortgage interest of the Cs' residential rental property on S Drive.
3 Respondent should have reported the residential rental expenses for the S Drive property on the
4 Schedule E. Respondent did not report residential rental information for the S Drive property
5 anywhere else in the 2006 tax return. Respondent knew or should have known that the S Drive
6 property was residential rental property. Respondent knew or should have known that he could
7 not combine the expenses from the residential rental property with business income on a Schedule
8 C.
9

10 3. On AC's Schedule C, Respondent listed a \$24,000.00 expense under "rent or lease of
11 other business property." However, the amount claimed equaled the income received from rental
12 property on F Street. Respondent should not have reported this amount as a rental expense
13 deduction on the Schedule C. Respondent knew or should have known that he could not combine
14 the expenses from the rental property with business income on a Schedule C.
15

16 4. On AC's Schedule C, Respondent listed \$13,620.00 under "repair and maintenance."
17 However, AC did not incur any repair and maintenance expenses on assets of her real estate
18 agency business. This amount is related to the S Drive property. Therefore, Respondent should
19 have reported this amount on the Schedule E for the S Drive property and not on the Schedule C.
20

21 f. On the Income Tax Return, Respondent improperly reported several items regarding
22 the S Drive residential rental property income and expenses. Respondent incorrectly reported
23 AC's real estate business address as the S Drive address. The S Drive property has been
24 residential rental property since 2000.

25 g. On Form 8829 Expenses for Business Use of Your Home, Respondent failed to report
26 the C's home mortgage interest and real estate taxes.
27
28

1 h. On the Schedule C, Respondent improperly reported residential rental losses as a
2 business expense. This error reduced the amount of self-employment tax that AC should have
3 paid.

4 14. Because of Respondent's errors, the Internal Revenue Service (IRS) audited ACs'
5 joint income tax return that was prepared by Respondent and assessed that they owed the IRS an
6 additional \$14,555.00 in taxes and \$2,378.26 in interest. The IRS disallowed, in part, rental real
7 estate losses; Schedule C travel, meals and entertainment; and Schedule C repairs and
8 maintenance. The IRS found that the underpayment of taxes was, in part, attributable to
9 negligence and disregard for the rules or regulations and substantial understatement of income
10 tax. This finding was directly related to Respondent's errors in reporting on the Schedule C and
11 Schedule E income tax forms, as stated in paragraph 13, above.
12

13 **FIRST CAUSE FOR DISCIPLINE**
14 **(Gross Negligence)**
15 **(Bus. & Prof. Code §5100(c))**

16 15. Complainant re-alleges paragraphs 11 through 14 above. Incorporating those matters
17 by reference, Respondent's license is subject to disciplinary action under Code section 5100,
18 subdivision (c), for gross negligence in the performance of public accountancy based upon his
19 conduct, which constituted an extreme departure from applicable professional standards.

20 **SECOND CAUSE FOR DISCIPLINE**
21 **(Repeated Acts of Negligence)**
22 **(Bus. & Prof. Code §5100(c))**

23 16. Complainant re-alleges paragraphs 11 through 14 above. Incorporating those matters
24 by reference, Respondent's license is subject to disciplinary action under Code section 5100,
25 subdivision (c), for repeated acts of negligence in the performance of public accountancy based
26 upon his conduct.

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1 **THIRD CAUSE FOR DISCIPLINE**
2 **(Failure to Observe Professional Standards in Performance of Public Accountancy)**
3 **(Bus. and Prof. Code § 5100(g) and Board Rule 58)**

4 17. Complainant re-alleges paragraphs 11 through 14. Incorporating those matters by
5 reference, Respondent's license is subject to disciplinary action under Code Section 5100,
6 subdivision (g) and Board Rule 58, for the failure to comply with professional standards
7 applicable to public accountancy, including Internal Revenue Service Regulations, title 31, part
8 10, sections 10.22, subdivision (a), and 10.51, subdivision (a)(13).

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the California Board of Accountancy issue a decision:

- 11 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
12 Accountant Certificate Number CPA 37981, issued to Crisostomo P. Villanueva;
13 2. Ordering Crisostomo P. Villanueva to pay the California Board of Accountancy the
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
15 Professions Code section 5107; and
16 3. Taking such other and further action as deemed necessary and proper.

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19 DATED: May 11, 2012

Patti Bowers
PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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